

By: Representatives Cockerham, Karriem,  
Stamps

To: Judiciary A

HOUSE BILL NO. 1215

1 AN ACT TO CREATE NEW SECTION 43-19-36, MISSISSIPPI CODE OF  
 2 1972, TO PROVIDE THAT CHILD SUPPORT OBLIGATIONS SHALL BE SUSPENDED  
 3 BY OPERATION OF LAW FOR PERSONS ORDERED TO PAY CHILD SUPPORT WHO  
 4 ARE INCARCERATED OR INVOLUNTARILY INSTITUTIONALIZED FOR MORE THAN  
 5 180 DAYS, WITH CERTAIN EXCEPTIONS; TO PROVIDE THAT THE CHILD  
 6 SUPPORT OBLIGATION WILL RESUME 60 DAYS AFTER THE NONCUSTODIAL  
 7 PARENT IS RELEASED FROM INCARCERATION, AND THE NONCUSTODIAL  
 8 PARENT'S CHILD SUPPORT ORDER AND OBLIGATION WILL BECOME  
 9 ENFORCEABLE ON THAT DATE; TO AUTHORIZE THE DEPARTMENT OF HUMAN  
 10 SERVICES WHEN ENFORCING A CHILD SUPPORT ORDER TO ADMINISTRATIVELY  
 11 ADJUST THE ARREARS BALANCE FOR AN ORDER FOR CHILD SUPPORT THAT WAS  
 12 SUSPENDED BECAUSE OF INCARCERATION OR INSTITUTIONALIZATION UNDER  
 13 CERTAIN CONDITIONS; TO AMEND SECTIONS 93-11-65, 93-11-71 AND  
 14 93-5-23, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING  
 15 SECTION; AND FOR RELATED PURPOSES.

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

17 **SECTION 1.** The following shall be codified as Section  
 18 43-19-36, Mississippi Code of 1972:

19 43-19-36. (1) For the purposes of this section, the  
 20 following terms shall be defined as provided in this subsection:

21 (a) "Incarcerated or involuntarily institutionalized"  
 22 includes, but is not limited to, involuntary confinement to a  
 23 federal or state prison or correctional facility, a county jail, a  
 24 juvenile detention center or a mental health facility. This term



25 does not include probation or work release, and the one hundred  
26 and eighty (180) consecutive days excludes credit for time served  
27 before sentencing.

28 (b) "Child support obligation" means the payment due on  
29 the current child support order, an arrears payment on a  
30 preexisting arrears balance, or interest on arrears.

31 (c) "Suspension" means a child support obligation being  
32 administratively set to Zero Dollars (\$0.00) for the period in  
33 which the person owing support is incarcerated or involuntarily  
34 institutionalized, and prevents the accrual of arrears during that  
35 period of incarceration.

36 (2) Child support obligations shall be suspended, by  
37 operation of law, for any period exceeding one hundred and eighty  
38 (180) consecutive days in which the person ordered to pay support  
39 is incarcerated or involuntarily institutionalized, unless the  
40 person owing support has the means to pay support in accordance  
41 with the guidelines established in 43-19-101 and 43-19-103 while  
42 incarcerated or involuntarily institutionalized.

43 (3) The child support obligation will resume the first day  
44 of the month following the expiration of sixty (60) days after the  
45 date the noncustodial parent is released from incarceration, and  
46 the noncustodial parent's child support order and obligation will  
47 become enforceable on that date. This section does not preclude a  
48 person owing support from seeking a modification of the child



49 support order based on a change in circumstances or other  
50 appropriate reason.

51 (4) (a) The Department of Human Services enforcing a child  
52 support order under Title IV-D of the Social Security Act (42 USC  
53 Section 651 et seq.) may, upon written notice of the proposed  
54 adjustment to the obligor and the obligee, administratively adjust  
55 the arrears balance for an order for child support suspended under  
56 subsection (2) of this act if all of the following occur:

57 (i) The department verifies that arrears were  
58 accrued in violation of this section;

59 (ii) The department verifies that the person  
60 owing support has the means to pay the support; and

61 (iii) Neither the support obligor nor obligee  
62 objects in writing within thirty (30) days of receipt of the  
63 notice of proposed adjustment by the department.

64 (b) If either the support obligor or obligee objects to  
65 the administrative adjustment set forth in this subsection, the  
66 department shall file a petition with the court for a  
67 determination of the arrears balance.

68 (c) The department may perform this adjustment without  
69 regard to whether it was enforcing the child support order at the  
70 time the parent owing support qualified for relief under this  
71 section.



72 (5) This section does not prohibit the department or a party  
73 from petitioning a court for a determination of child support or  
74 arrears amounts.

75 (6) This section applies to every child support obligation  
76 in which the person who is ordered to pay is incarcerated for one  
77 hundred and eighty (180) consecutive days after the enactment of  
78 this section.

79 **SECTION 2.** Section 93-11-65, Mississippi Code of 1972, is  
80 amended as follows:

81 93-11-65. (1) (a) In addition to the right to proceed  
82 under Section 93-5-23, Mississippi Code of 1972, and in addition  
83 to the remedy of habeas corpus in proper cases, and other existing  
84 remedies, the chancery court of the proper county shall have  
85 jurisdiction to entertain suits for the custody, care, support and  
86 maintenance of minor children and to hear and determine all such  
87 matters, and shall, if need be, require bond, sureties or other  
88 guarantee to secure any order for periodic payments for the  
89 maintenance or support of a child. In the event a legally  
90 responsible parent has health insurance available to him or her  
91 through an employer or organization that may extend benefits to  
92 the dependents of such parent, any order of support issued against  
93 such parent may require him or her to exercise the option of  
94 additional coverage in favor of such children as he or she is  
95 legally responsible to support. Proceedings may be brought by or  
96 against a resident or nonresident of the State of Mississippi,



97 whether or not having the actual custody of minor children, for  
98 the purpose of judicially determining the legal custody of a  
99 child. All actions herein authorized may be brought in the county  
100 where the child is actually residing, or in the county of the  
101 residence of the party who has actual custody, or of the residence  
102 of the defendant. Process shall be had upon the parties as  
103 provided by law for process in person or by publication, if they  
104 be nonresidents of the state or residents of another jurisdiction  
105 or are not found therein after diligent search and inquiry or are  
106 unknown after diligent search and inquiry; provided that the court  
107 or chancellor in vacation may fix a date in termtime or in  
108 vacation to which process may be returnable and shall have power  
109 to proceed in termtime or vacation. Provided, however, that if  
110 the court shall find that both parties are fit and proper persons  
111 to have custody of the children, and that either party is able to  
112 adequately provide for the care and maintenance of the children,  
113 the chancellor may consider the preference of a child of twelve  
114 (12) years of age or older as to the parent with whom the child  
115 would prefer to live in determining what would be in the best  
116 interest and welfare of the child. The chancellor shall place on  
117 the record the reason or reasons for which the award of custody  
118 was made and explain in detail why the wishes of any child were or  
119 were not honored.

120 (b) An order of child support shall specify the sum to  
121 be paid weekly or otherwise. In addition to providing for support



122 and education, the order shall also provide for the support of the  
123 child prior to the making of the order for child support, and such  
124 other expenses as the court may deem proper.

125 (c) The court may require the payment to be made to the  
126 custodial parent, or to some person or corporation to be  
127 designated by the court as trustee, but if the child or custodial  
128 parent is receiving public assistance, the Department of Human  
129 Services shall be made the trustee.

130 (d) The noncustodial parent's liabilities for past  
131 education and necessary support and maintenance and other expenses  
132 are limited to a period of one (1) year next preceding the  
133 commencement of an action.

134 (2) Provided further, that where the proof shows that both  
135 parents have separate incomes or estates, the court may require  
136 that each parent contribute to the support and maintenance of the  
137 children in proportion to the relative financial ability of each.

138 (3) Except as otherwise provided in Section 1 of this act  
139 for persons who are incarcerated or involuntarily  
140 institutionalized, whenever the court has ordered a party to make  
141 periodic payments for the maintenance or support of a child, but  
142 no bond, sureties or other guarantee has been required to secure  
143 such payments, and whenever such payments as have become due  
144 remain unpaid for a period of at least thirty (30) days, the court  
145 may, upon petition of the person to whom such payments are owing,  
146 or such person's legal representative, enter an order requiring



147 that bond, sureties or other security be given by the person  
148 obligated to make such payments, the amount and sufficiency of  
149 which shall be approved by the court. The obligor shall, as in  
150 other civil actions, be served with process and shall be entitled  
151 to a hearing in such case.

152 (4) When a charge of abuse or neglect of a child first  
153 arises in the course of a custody or maintenance action pending in  
154 the chancery court pursuant to this section, the chancery court  
155 may proceed with the investigation, hearing and determination of  
156 such abuse or neglect charge as a part of its hearing and  
157 determination of the custody or maintenance issue as between the  
158 parents, as provided in Section 43-21-151, notwithstanding the  
159 other provisions of the Youth Court Law. The proceedings in  
160 chancery court on the abuse or neglect charge shall be  
161 confidential in the same manner as provided in youth court  
162 proceedings, and the chancery court shall appoint a guardian ad  
163 litem in such cases, as provided under Section 43-21-121 for youth  
164 court proceedings, who shall be an attorney. In determining  
165 whether any portion of a guardian ad litem's fee shall be assessed  
166 against any party or parties as a cost of court for reimbursement  
167 to the county, the court shall consider each party's individual  
168 ability to pay. Unless the chancery court's jurisdiction has been  
169 terminated, all disposition orders in such cases for placement  
170 with the Department of Human Services shall be reviewed by the  
171 court or designated authority at least annually to determine if



172 continued placement with the department is in the best interest of  
173 the child or the public.

174 (5) Each party to a paternity or child support proceeding  
175 shall notify the other within five (5) days after any change of  
176 address. In addition, the noncustodial and custodial parent shall  
177 file and update, with the court and with the state case registry,  
178 information on that party's location and identity, including  
179 social security number, residential and mailing addresses,  
180 telephone numbers, photograph, driver's license number, and name,  
181 address and telephone number of the party's employer. This  
182 information shall be required upon entry of an order or within  
183 five (5) days of a change of address.

184 (6) In any case subsequently enforced by the Department of  
185 Human Services pursuant to Title IV-D of the Social Security Act,  
186 the court shall have continuing jurisdiction.

187 (7) In any subsequent child support enforcement action  
188 between the parties, upon sufficient showing that diligent effort  
189 has been made to ascertain the location of a party, due process  
190 requirements for notice and service of process shall be deemed to  
191 be met with respect to the party upon delivery of written notice  
192 to the most recent residential or employer address filed with the  
193 state case registry.

194 (8) (a) The duty of support of a child terminates upon the  
195 emancipation of the child. Unless otherwise provided for in the





196 underlying child support judgment, emancipation shall occur when  
197 the child:

198 (i) Attains the age of twenty-one (21) years, or

199 (ii) Marries, or

200 (iii) Joins the military and serves on a full-time  
201 basis, or

202 (iv) Is convicted of a felony and is sentenced to  
203 incarceration of two (2) or more years for committing such  
204 felony; \* \* \*

205 (b) Unless otherwise provided for in the underlying  
206 child support judgment, the court may determine that emancipation  
207 has occurred and no other support obligation exists when the  
208 child:

209 (i) Discontinues full-time enrollment in school  
210 having attained the age of eighteen (18) years, unless the child  
211 is disabled, or

212 (ii) Voluntarily moves from the home of the  
213 custodial parent or guardian, establishes independent living  
214 arrangements, obtains full-time employment and discontinues  
215 educational endeavors prior to attaining the age of twenty-one  
216 (21) years, or

217 (iii) Cohabits with another person without the  
218 approval of the parent obligated to pay support; \* \* \*



219 (c) The duty of support of a child who is incarcerated  
220 but not emancipated shall be suspended for the period of the  
221 child's incarceration.

222 (9) A determination of emancipation does not terminate any  
223 obligation of the noncustodial parent to satisfy arrearage  
224 existing as of the date of emancipation; the total amount of  
225 periodic support due prior to the emancipation plus any periodic  
226 amounts ordered paid toward the arrearage shall continue to be  
227 owed until satisfaction of the arrearage in full, in addition to  
228 the right of the person for whom the obligation is owed to execute  
229 for collection as may be provided by law.

230 (10) Upon motion of a party requesting temporary child  
231 support pending a determination of parentage, temporary support  
232 shall be ordered if there is clear and convincing evidence of  
233 paternity on the basis of genetic tests or other evidence, unless  
234 the court makes written findings of fact on the record that the  
235 award of temporary support would be unjust or inappropriate in a  
236 particular case.

237 (11) Custody and visitation upon military temporary duty,  
238 deployment or mobilization shall be governed by Section 93-5-34.

239 **SECTION 3.** Section 93-11-71, Mississippi Code of 1972, is  
240 amended as follows:

241 93-11-71. (1) Except as otherwise provided in Section 1 of  
242 this act for persons who are incarcerated or involuntarily  
243 institutionalized, whenever a court orders any person to make



244 periodic payments of a sum certain for the maintenance or support  
245 of a child, and whenever such payments as have become due remain  
246 unpaid for a period of at least thirty (30) days, a judgment by  
247 operation of law shall arise against the obligor in an amount  
248 equal to all payments that are then due and owing.

249 (a) A judgment arising under this section shall have  
250 the same effect and be fully enforceable as any other judgment  
251 entered in this state. A judicial or administrative action to  
252 enforce the judgment may be begun at any time; and

253 (b) Such judgments arising in other states by operation  
254 of law shall be given full faith and credit in this state.

255 (2) Any judgment arising under the provisions of this  
256 section shall operate as a lien upon all the property of the  
257 judgment debtor, both real and personal, which lien shall be  
258 perfected as to third parties without actual notice thereof only  
259 upon enrollment on the judgment roll. The department or attorney  
260 representing the party to whom support is owed shall furnish an  
261 abstract of the judgment for periodic payments for the maintenance  
262 and support of a child, along with sworn documentation of the  
263 delinquent child support, to the circuit clerk of the county where  
264 the judgment is rendered, and it shall be the duty of the circuit  
265 clerk to enroll the judgment on the judgment roll. Liens arising  
266 under the provisions of this section may be executed upon and  
267 enforced in the same manner and to the same extent as any other  
268 judgment.



269           (3) Notwithstanding the provisions in subsection (2) of this  
270 section, any judgment arising under the provisions of this section  
271 shall subject the following assets to interception or seizure  
272 without regard to the entry of the judgment on the judgment roll  
273 of the situs district or jurisdiction and such assets shall apply  
274 to all child support owed including all arrears:

275           (a) Periodic or lump-sum payments from a federal, state  
276 or local agency, including unemployment compensation, workers'  
277 compensation and other benefits;

278           (b) Winnings from lotteries and gaming winnings that  
279 are received in periodic payments made over a period in excess of  
280 thirty (30) days;

281           (c) Assets held in financial institutions;

282           (d) Settlements and awards resulting from civil  
283 actions;

284           (e) Public and private retirement funds, only to the  
285 extent that the obligor is qualified to receive and receives a  
286 lump-sum or periodic distribution from the funds;

287           (f) Lump-sum payments as defined in Section 93-11-101;  
288 and

289           (g) Unclaimed property as described in Section 89-12-1  
290 et seq.

291           (4) Notwithstanding the provisions of subsections (1) and  
292 (2) of this section, upon disestablishment of paternity granted  
293 pursuant to Section 93-9-10 and a finding of clear and convincing



294 evidence including negative DNA testing that the obligor is not  
295 the biological father of the child or children for whom support  
296 has been ordered, the court shall disestablish paternity and may  
297 forgive any child support arrears of the obligor for the child or  
298 children determined by the court not to be the biological child or  
299 children of the obligor, if the court makes a written finding  
300 that, based on the totality of the circumstances, the forgiveness  
301 of the arrears is equitable under the circumstances.

302 (5) In any case in which a child receives assistance from  
303 block grants for Temporary Assistance for Needy Families (TANF),  
304 and the obligor owes past-due child support, the obligor, if not  
305 incapacitated, may be required by the court to participate in any  
306 work programs offered by any state agency.

307 (6) A parent who receives social security disability  
308 insurance payments who is liable for a child support arrearage and  
309 whose disability insurance benefits provide for the payment of  
310 past due disability insurance benefits for the support of the  
311 minor child or children for whom the parent owes a child support  
312 arrearage shall receive credit toward the arrearage for the  
313 payment or payments for the benefit of the minor child or children  
314 if the arrearage accrued after the date of disability onset as  
315 determined by the Social Security Administration.

316 **SECTION 4.** Section 93-5-23, Mississippi Code of 1972, is  
317 amended as follows:



318           93-5-23. When a divorce shall be decreed from the bonds of  
319 matrimony, the court may, in its discretion, having regard to the  
320 circumstances of the parties and the nature of the case, as may  
321 seem equitable and just, make all orders touching the care,  
322 custody and maintenance of the children of the marriage, and also  
323 touching the maintenance and alimony of the wife or the husband,  
324 or any allowance to be made to her or him, and shall, if need be,  
325 require bond, sureties or other guarantee for the payment of the  
326 sum so allowed. Orders touching on the custody of the children of  
327 the marriage shall be made in accordance with the provisions of  
328 Section 93-5-24. For the purposes of orders touching the  
329 maintenance and alimony of the wife or husband, "property" and "an  
330 asset of a spouse" shall not include any interest a party may have  
331 as an heir at law of a living person or any interest under a  
332 third-party will, nor shall any such interest be considered as an  
333 economic circumstance or other factor. The court may afterwards,  
334 on petition, change the decree, and make from time to time such  
335 new decrees as the case may require. However, where proof shows  
336 that both parents have separate incomes or estates, the court may  
337 require that each parent contribute to the support and maintenance  
338 of the children of the marriage in proportion to the relative  
339 financial ability of each. In the event a legally responsible  
340 parent has health insurance available to him or her through an  
341 employer or organization that may extend benefits to the  
342 dependents of such parent, any order of support issued against



343 such parent may require him or her to exercise the option of  
344 additional coverage in favor of such children as he or she is  
345 legally responsible to support.

346 Except as otherwise provided in Section 1 of this act for  
347 persons who are incarcerated or involuntarily institutionalized,  
348 whenever the court has ordered a party to make periodic payments  
349 for the maintenance or support of a child, but no bond, sureties  
350 or other guarantee has been required to secure such payments, and  
351 whenever such payments as have become due remain unpaid for a  
352 period of at least thirty (30) days, the court may, upon petition  
353 of the person to whom such payments are owing, or such person's  
354 legal representative, enter an order requiring that bond, sureties  
355 or other security be given by the person obligated to make such  
356 payments, the amount and sufficiency of which shall be approved by  
357 the court. The obligor shall, as in other civil actions, be  
358 served with process and shall be entitled to a hearing in such  
359 case.

360 At the discretion of the court, any person found in contempt  
361 for failure to pay child support and imprisoned therefor may be  
362 referred for placement in a state, county or municipal  
363 restitution, house arrest or restorative justice center or  
364 program, provided such person meets the qualifications prescribed  
365 in Section 99-37-19.

366 Whenever in any proceeding in the chancery court concerning  
367 the custody of a child a party alleges that the child whose



368 custody is at issue has been the victim of sexual or physical  
369 abuse by the other party, the court may, on its own motion, grant  
370 a continuance in the custody proceeding only until such allegation  
371 has been investigated by the Department of Human Services. At the  
372 time of ordering such continuance, the court may direct the party  
373 and his attorney making such allegation of child abuse to report  
374 in writing and provide all evidence touching on the allegation of  
375 abuse to the Department of Human Services. The Department of  
376 Human Services shall investigate such allegation and take such  
377 action as it deems appropriate and as provided in such cases under  
378 the Youth Court Law (being Chapter 21 of Title 43, Mississippi  
379 Code of 1972) or under the laws establishing family courts (being  
380 Chapter 23 of Title 43, Mississippi Code of 1972).

381 If after investigation by the Department of Human Services or  
382 final disposition by the youth court or family court allegations  
383 of child abuse are found to be without foundation, the chancery  
384 court shall order the alleging party to pay all court costs and  
385 reasonable attorney's fees incurred by the defending party in  
386 responding to such allegation.

387 The court may investigate, hear and make a determination in a  
388 custody action when a charge of abuse and/or neglect arises in the  
389 course of a custody action as provided in Section 43-21-151, and  
390 in such cases the court shall appoint a guardian ad litem for the  
391 child as provided under Section 43-21-121, who shall be an  
392 attorney. Unless the chancery court's jurisdiction has been





393 terminated, all disposition orders in such cases for placement  
394 with the Department of Human Services shall be reviewed by the  
395 court or designated authority at least annually to determine if  
396 continued placement with the department is in the best interest of  
397 the child or public.

398 The duty of support of a child terminates upon the  
399 emancipation of the child. The court may determine that  
400 emancipation has occurred pursuant to Section 93-11-65.

401 Custody and visitation upon military temporary duty,  
402 deployment or mobilization shall be governed by Section 93-5-34.

403 **SECTION 5.** This act shall take effect and be in force from  
404 and after July 1, 2023.

